IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 5TH JANUARY 2007 / 15TH POUSHA, 1928

W.P.(C)27537/06

PETITIONER

NANDAKUMARAN KARTHA,
S/O. VASUDEVA PANICKER,
KUMMANOTTU MADAM, KUMMANODU KARA,
PATTIMATTAM VILLAGE.

BY ADV. SRI. T.A.UNNIKRISHNAN
SRI. RESHMI POULOSE

RESPONDENTS

1. MANIYAN, S/O. VELAYUDHANKUNJI,
KUMMANOTTU MADAM, KUMMANODU KARA,
PATTIMATAM VILLAGE.

2. JAYAN, S/O. VELAYUDHAN KUNJI,
KUMMANOTTU MADAM, KUMMANODU KARA,
PATTIMATTAM VILLAGE.

3. OMANAKUNJAMMA, D/O. VELYAUDHAN KUNJI,
KUMMANOTTU MADAM, KUMMANODU KARA,
PATTIMATTAM VILLAGE.

BY BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1:	TRUE COPY OF ROUGH SKETCH SHOWING THE LIE OF PROPERTY.
EXT.P1(A):	TRUE COPY OF REPORT OF ADVOCATE COMMISSIONER DATED 20.8.01.
EXT.P2:	TRUE COPY OF REPORT.
EXT.P2(A):	TRUE COPY OF SKETCH.
EXT.P3:	TRUE COPY OF OBJECTION FILED BY PETITIONER TO REPORT OF COMMISSIONER.
EXT.P4:	TRUE COPY OF ORDER DATED 13.9.2006 IN I.A.2477/05 IN O.S.163/01.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.27537 OF 2006

DATED THIS THE 5th DAY OF JANUARY, 2007

JUDGMENT

Petitioner is the plaintiff and respondents the defendants in O.S. 163/01 on the file of Munsiff Court, Perumbavoor. The suit was filed seeking a decree for permanent prohibitory injunction in respect of plaint schedule properties. Item No.2 is claimed to be a way provided to petitioner as per partition deed 1195/2000, as the way to item No.1 of the properties. Defendants contended that the disputed way is the way provided to them as per partition deed 2113/1950. A Commissioner was appointed. Commissioner submitted a report and plan. Petitioner filed I.A.2477/05, an application under Order XXVI Rule 10 of Code of Civil Procedure to set aside the report and plan submitted by the Commissioner. It was dismissed under Ext.P4 order. This petition is filed under Article 227 of Constitution of India challenging that order.

2. Learned Counsel appearing for petitioner and respondents were heard.

3. Arguments of learned Counsel appearing for petitioner was that the Commissioner did not identify the pathway provided to

petitioner as per document No.1195/2000 and the pathway shown in the plaint submitted by Commissioner is not the pathway provided under 1950 partition deed and therefore learned Munsiff should have remitted the report and plan to Commissioner to file a further report.

4. Learned Counsel appearing for respondents submitted that Commissioner correctly demarcated the way after identification and there is no infirmity in Ext.P4 order.

5. On hearing learned Counsel appearing for petitioner and respondents, I do not find any reason to interfere with Ext.P4 order. Learned Munsiff on the facts found that the report is not liable to be set aside. That is an order passed in an interlocutory application, which could be challenged by petitioner along with the decision in the suit, if it goes against him. Petitioner is also entitled to adduce evidence in support of the contention that the identification made by Commissioner is not correct or proper.

In such circumstances, petition is dismissed with liberty to the petitioner to challenge the order along with judgment ,if necessary.

M.SASIDHARAN NAMBIAR,JUDGE

Acd